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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Capon et al.

Serial No.: 08/238,405

Filed: 5 May 1994

For: CHIMERIC CHAINS FOR RECEPTOR-
ASSOCIATED SIGNAL
TRANSDUCTION PATHWAYS

Group Art Unit: 1647

Examiner: Hayes, R.

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OFFICE OF PETITIONS

**PETITION UNDER 37 CFR 1.181 TO
WITHDRAW IMPROPER NOTICE
OF ABANDONMENT**

BOX AF
Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

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JAN 07 2003

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Appellants hereby petition that the Communication Re: Appeal indicating the application is dismissed mailed 2 December 2002 is improper and must be withdrawn.

Attached hereto is the timely filed reply to the Notice of Non-Compliance mailed 13 August 2003, along with the requisite Petition for Extension of Time.

STATEMENT OF FACTS

- (1) The Notice of Appeal was filed 27 December 2001.
- (2) The Appeal Brief was filed timely on 26 March 2002, along with a Petition for Extension of Time for a one-month extension.
- (3) The Notice of Non-Compliance was mailed 13 August 2002 alleging that recitation to exhibits in the Appeal Brief to demonstrate the state of the art, the definition of terms and enablement of the claimed invention was improper.

Petition Under 37 CFR 1.181 To Withdraw
Improper Notice of Abandonment
U.S. Ser. No.: 08/238,405

(4) The Notice of Non-Compliance provides a period for response which reads as follows:

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 C.F.R. 1.136.

(5) Appellants are responding to the Notice of Non-Compliance within the stated period noted therein, namely provision (1), one month from the date of the Notification, which period is extendable under 37 C.F.R. 1.136(a).

(6) The attached resubmitted Appeal Brief, in triplicate, with the requisite Petition for Extension of Time, are timely filed.

POINTS TO BE REVIEWED

The Notice of Non-Compliance clearly sets forth a time period for response, which has yet to expire. Notably, that Notice of Non-Compliance was mailed subsequent to the seven-month period for response to the Notice of Appeal. Thus, if the Notice of Abandonment were correct, there would be no way for an Appellant to respond.

It is believed that is not the case and the Notice of Non-Compliance sets a proper period for response. Reference also can be made to 37 C.F.R. 1.136(a) wherein particular instances of inapplicability apply. Several rules relating to the appeal process are recited,

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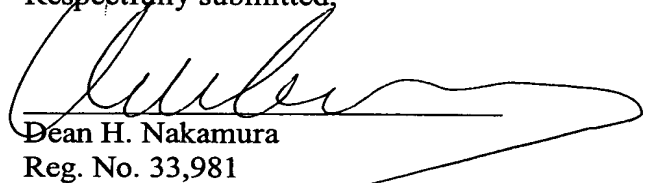
however 37 C.F.R. 1.192 under which the Notice of Non-Compliance sounds, is not one of those instances.

ACTION REQUESTED

Appellants request the instant Petition be granted, the Notice of Abandonment be withdrawn and the file be forwarded to the Examiner for continued prosecution.

If any fees are required for the instant petition, the Commissioner is authorized to charge Deposit Account No. 18-2220. This Petition is being filed in duplicate.

Respectfully submitted,



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Dated: 13 December 2002